



AMERICAN MANAGEMENT SYSTEMS, INCORPORATED

BUYSENSE TERMS OF SERVICE AGREEMENT - SUPPLIER

Company Name:			
Company Address:	Street	City	Zip Code
Company Structure:	<input type="checkbox"/> Corporation <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Government Entity <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other:		
State of Formation:		Company Contact:	
Effective Date:		AMS Account Manager:	
Federal Tax ID Number:			

This Terms of Service Agreement (the “Agreement”) is made effective as of the date shown above (the “Effective Date”) between American Management Systems, Incorporated (“AMS”), a Delaware corporation having its principal place of business at 4050 Legato Road, Fairfax, Virginia 22033, and the supplier whose information is entered in the signature block below (the “Supplier”).

This Agreement specifies the terms of Supplier’s participation in the AMS web-based system known as BuysenseSM (“Buysense”). This Agreement consists of this signature page, the Terms and Conditions attached hereto and all Customer Attachments (hereinafter defined) governed hereby.

Each party has caused its duly authorized representative to execute this Agreement as of the Effective Date.

American Management Systems, Incorporated (AMS) _____ (Supplier)

By: _____

By: _____

Name: Caroline H. Rapking

Name: _____

Title: Vice President

Title: _____

Note regarding execution of this Agreement: Upon execution of this Agreement by Supplier, please return one (1) signed original, including Customer Attachment(s) to American Management Systems, Incorporated at the following address:

American Management Systems, Incorporated
P.O. Box 221554
Chantilly, VA 20153-1554

TERMS AND CONDITIONS

1. Buysense Service. AMS offers the AMS Buysense Service, an internet-based procurement service to facilitate the procurement of products and services by customers one or more suppliers. This Agreement sets forth the terms of service according to which AMS will include information concerning the Supplier Products on a unique Buysense website specifically created for a specific Customer (each such website is referred to as a “Customer Website”) in order to facilitate the procurement of Supplier Products by such Customer. Suppliers will provide AMS with a Catalog to allow the Supplier Products to be purchased by a Customer through the Customer Website for such Customer. For the initial Customer and additional customers, AMS and Supplier will execute a customer attachment, a form of which is attached hereto as Exhibit A identifying the Customer and specifying the “Compensation Plan” and other Customer-specific information (the “Customer Attachment”).

2. Definitions.

“**Catalog**” means a listing of product information and services descriptions relating to the Supplier Products to be offered to a particular Customer that is maintained either as a Punch-Out Catalog or a CIF Catalog.

“**CIF Catalog**” means a Catalog that is a properly formatted computer file in [Catalog] [Interchange] [Format] that may read by the Customer Website.

“**Mark**” means a party’s trade name, trademark, service mark, logo or other similar indicia of identity or source.

“**Order**” means an order for Supplier Products placed by a Customer through the Customer Website.

“**Order Data**” means all data and information relating to Orders, including, without limitation, the specifics of a given transaction.

“**Punch-Out Catalog**” means a Catalog, hosted by Supplier on the Supplier Site where the actual Orders are processed. Customer may access this Punch-Out Catalog via an internet link provided by Supplier to AMS that redirects a Customer to Supplier Site. The Punch-Out Catalog will permit: (i) Customer to access the Supplier Website when a Customer selects the Punch-Out Catalog on the Customer Website; (ii) Customer to create an Order through the Customer Website’s procurement process; (iii) the Customer

Website to forward an Order to the Supplier Site for Confirmation and Order processing.

“**Supplier Products**” means goods and services marketed or sold by or through Supplier, whether or not manufactured by Supplier or bearing a Supplier trademark.

“**Supplier Site**” means an Internet site operated and maintained by Supplier that has been made subject to this Agreement.

3. Right to Use. AMS grants to Supplier the right to sell products to the Customer on the Customer Website. Supplier agrees to use the Customer Website to sell products only where the applicable Customer has agreed to allow access by its users to the Supplier.

4. Establishment / Maintenance of Catalog. Within ten (10) days following the effective date, Supplier will provide the applicable Catalog to AMS. From time to time, Supplier may provide AMS with updated versions of the Catalog (in the same format of catalog as the original Catalog for a given Customer). AMS shall reflect these changes on the Customer Website within a reasonable period of time. If Supplier uses a Punch-Out Catalog the Supplier will maintain all product information on the Supplier Site and the responsibilities of the parties with respect to the Punch-Out Catalog is described in Section 5. The Buysense Service only provides Supplier’s Catalog to the applicable Customer(s) and does not permit other suppliers or the public to access the Catalog. The Customer may elect not to view or make active Supplier’s Catalog for shopping within the Customer Website.

5. Punch-Out Catalog.

(a) **Supplier Site.** When mutually agreed to and provided Supplier uses a Punch-Out Catalog, Supplier may integrate its existing Supplier Site to the Customer Website. The parties will use commercially reasonable efforts to electronically link the functionality of each Customer Website with each applicable Supplier Site as described in this Agreement the applicable Customer Attachment.

(b) **Changes to Specifications or Sites.** Promptly after the execution of any Customer Attachment for a Customer where Supplier will utilize a Punch-Out Catalog, AMS will provide specifications for the Customer Website to Supplier (including but not

limited to any data formatting requirements) and Supplier will provide to AMS connectivity specifications for the Supplier Site. Each party will provide a revised and updated copy of its specifications to the other party promptly upon providing such update to any third party.

(c) Site Responsibility. Except as otherwise set forth herein, each party shall be responsible, at its own expense, for (i) developing, operating and maintaining its Sites; (ii) acquiring and maintaining its server hardware and software (or obtaining third-party hosting services) for its respective Sites; and (iii) maintaining Internet connectivity.

(d) License. Supplier hereby grants to AMS a limited, non-exclusive, royalty-free right to link to and access the Supplier Sites from the Customer Website, subject to the terms and conditions of this Agreement and solely for the purpose of permitting Customers to access Supplier Product information and permitting Customers to order Supplier Products.

6. Customer Support.

(a) AMS Duties. AMS shall provide the first contact and system support assistance to Customers on all functionality and use issues for the Customer Website (including links to Supplier Site). When known, AMS shall promptly notify Supplier of any such issues relating to Catalog, the Supplier Site and/or other Supplier materials/systems.

(b) Supplier Duties. Supplier shall provide all customer support relating to the Catalog, the Supplier Products and Supplier Sites in a manner consistent with the customer support that Supplier provides to other Supplier customers, and at least as good as the customer support that Supplier provides to Supplier customers who are purchasing through means other than websites.

7. Proprietary Rights.

(a) Grant of License. Supplier hereby grants AMS a non-exclusive, royalty-free: (i) license to use, copy and display the Catalog, any information contained therein and the Supplier Marks for the purposes of permitting Customers named on a Customer Attachment to access information about and order Supplier Products from the Catalog and (ii) if Supplier is using a Punch-Out Catalog, right to link to and access the Punch-Out Catalog on the Supplier Site from the Customer Website, solely for the purposes of permitting Customers to access the Supplier Website and permitting Customers to order Supplier Products.

(b) Modifications. AMS shall not modify or remove any of the proprietary rights markings in the Catalog. AMS shall not modify the Catalog. Except as supplied by Supplier in the Catalog, AMS shall not make any representations or warranties, or provide any information, to any third party regarding any Supplier Products (including, but not limited to, any representations or warranties of any information regarding availability, delivery, pricing, characteristics, qualifications or specifications thereof). If AMS believes in good faith that any Supplier Information does not conform to the requirements described in the first sentence of Section 14(b), AMS will be entitled to withdraw the Catalog from the Customer Website. In such a case, AMS will promptly notify the Supplier of the actions it has taken and will work with the Supplier promptly to resolve AMS's concerns. When AMS's concerns are satisfactorily resolved, AMS will promptly restore, if appropriate, the Catalog to the Customer Website. AMS will have no liability to the Supplier or anyone else for exercising these rights.

(c) Acknowledgment. Each party acknowledges that the technology embodied in the other party's Site is based on patented or patentable inventions, trade secrets, copyrights and other intellectual property rights ("Intellectual Property Rights") owned by the other party and its applicable licensors.

(d) AMS Rights. AMS's Intellectual Property Rights include all trademarks owned or licensed, and displayed, by AMS on the Customer Website, including but not limited to, "AMS," "BUYSENSE," "BUYSENSE.COM," AND "AMERICAN MANAGEMENT SYSTEMS." As between the parties, AMS shall be the sole owner of (or, with respect to any items licensed by AMS, shall retain all rights to) the Customer Website and all Intellectual Property Rights associated with the Customer Website, including any modifications, updates, enhancements, or upgrades to any of the foregoing, as well as any Order Data generated or collected on such site (collectively, the "AMS Materials"). Except as provided in this Agreement, Supplier shall not, without AMS's prior written approval, copy or use in any way not authorized by this Agreement, in whole or in part, any AMS Materials. Any permitted copies of such property, in whole or in part, alone or as part of a derivative work, shall be and remains AMS's sole property. Supplier agrees to reproduce and include AMS's copyright, trademark, and other proprietary rights notices on any permitted copies of the AMS Materials, including, without limitation, partial copies and copied materials in derivative works. Supplier

shall not copy or reproduce any third-party copyrighted or trademarked materials, which appear on or are otherwise associated with the Customer Website without the prior written consent of AMS.

(e) **Supplier Rights.** Anything to the contrary notwithstanding, as between the parties, Supplier (or its suppliers) retains all rights, title and interest in and to all copyrights, patents, trademarks, trade secrets, and all other proprietary rights in and to the Catalog, the Supplier Site and Supplier's Marks. Nothing in this Agreement shall cause or imply any sale or other transfer to AMS or any third party of any of the same.

8. Acknowledgments.

(a) Supplier acknowledges that:

(i) It is taking part in a Supplier program that is open to more than one Supplier and that the Customer Website is intended to facilitate Customer's ability to obtain products and services from one or more suppliers. Nothing in this Agreement will be construed to prevent AMS from entering similar agreements with any third parties, including, without limitation, suppliers that may be in competition with Supplier;

(ii) Customers will submit their requirements and the Customer Website will provide a list of product and/or service information regarding the matching products and/or services from the suppliers selected by the Customer, sorted by various functional criteria. A Customer whose requirements Supplier may consider as matching the specifications for a Supplier product may not be deemed a matching product by the Customer Website. Accordingly, Supplier agrees that AMS is not responsible for, and shall have no liability in connection with, matches made, or failed to be made, by the Customer Website; and

(iii) AMS may use, reproduce and distribute aggregated non-personally identifiable Order Data received by it in the course of providing the Buysense Service to the extent such use is not prohibited by applicable laws and regulations and is not contrary to the privacy policy applicable to the Customer Website.

(b) AMS acknowledges that all Shipping, Title, Risk of Loss, Product Pricing and Terms of Sale terms and matters are between Customer and Supplier. AMS waives any and all claims against Supplier for such matters.

9. Compensation.

(a) Supplier will pay AMS in accordance with the Compensation Plan defined in the applicable Customer Attachment with respect to such Customer.

(b) Supplier will not solicit a transaction with a Customer where the transaction was identified through the Customer Website other than by use of the Customer Website except in the case of a response to a Customer bid solicitation not provided through the Buysense Service.

10. Publicity and Marks.

(a) **Publicity.** Each party shall (i) submit to the other all advertising, written sales promotions, press releases and other publicity matters relating to this Agreement (other than such materials disseminated solely on an internal basis) in which any of the other party's Marks are used and (ii) not publish or use any such advertising, sales promotions, press releases or other publicity matters without the other party's prior consent. The parties agree to work toward developing a mutually agreeable statement for public use by the parties in marketing materials.

(b) **Marks.** Each party shall comply with the other party's requirements regarding the format and placement of its Marks. Neither party shall take any action to register or otherwise interfere with the other party's interests in its Marks. Unless specifically provided for herein, neither party shall adopt or otherwise use any trademark, trade name, service mark, logo, or symbol that is similar to or likely to be confused with any of the other party's Marks. Each party's use of the other party's Marks shall inure to the benefit of the other party.

11. Invoices.

(a) **Invoice Terms.** AMS will present Supplier with an invoice monthly for the amounts payable to AMS under this Agreement. Payments will be due and payable within thirty (30) days following Supplier's receipt of each invoice. If Supplier fails to pay any invoiced amount on time, AMS may charge interest on the overdue amounts at a rate of one and one-half percent (1.5%) per month, or the maximum rate allowed by law if less. Interest will begin to accrue on the thirty-first (31st) day after Supplier's receipt of the applicable invoice and will accumulate on the outstanding balance on a daily basis until paid in full. Supplier may withhold payment on amounts that it does not agree in good faith are due to AMS provided that (i) Supplier notifies AMS in writing what amounts it disputes and the reasons for doing so (which notice must be received by AMS prior to the payment due date for those amounts), (ii) Supplier timely pays all

other amounts specified on the invoice, (iii) Supplier diligently pursues resolving the dispute, and (iv) Supplier pays any amounts ultimately determined to have been properly due to AMS promptly upon such resolution. All Supplier account credits with AMS are at the sole discretion of AMS.

(b) Taxes. Supplier will be responsible for all taxes arising out of or relating to this Agreement or the services provided under it, with the sole exception of taxes on AMS's net income.

(c) Failure to Pay. If Supplier fails to make any payment when due AMS will have the right, upon reasonable written notice, to terminate Supplier's access to and participation in any or all of the Customer Website(s). If Supplier's access or participation on one or more of the Customer Website is terminated under this Agreement, AMS will not be liable for any damages resulting from or claims arising out of such termination, including without limitation any claims brought by a Customer. AMS reserves the right to provide any Customer with the name of any delinquent Supplier.

12. Term and Termination.

(a) Term and Renewal. The initial term of this Agreement will expire twelve (12) months after the Effective Date (the "Term"). The Term will automatically renew for successive one (1) year periods, unless a party provides the other with written notice at least thirty (30) calendar days prior to the expiration of the then current Term that it does not wish for this Agreement to be renewed.

(b) Termination. Either party may terminate this Agreement on thirty (30) days written notice to the other party.

(c) Survival. Upon termination of this Agreement, all provisions, which by their nature extend beyond termination shall survive and each party will have all the remedies that may be available to it under law or in equity (subject to the limitations set forth in this Agreement).

13. Nondisclosure. Each party acknowledges that it may gain access to the confidential information belonging to or supplied by the other Party (the "Confidential Information") in connection with its performance under this Agreement. Confidential Information does not include (i) information already known to the receiving Party at the time of disclosure by the furnishing Party; (ii) information obtained by the receiving Party from a third party having a right to disclose such information without

restriction; (iii) information developed by the receiving Party without reference to the furnishing Party's Confidential Information; or (iv) information that must be disclosed pursuant to a subpoena or government order, provided that the receiving party has given the furnishing party notice of the disclosure and reasonable assistance in resisting or limiting the scope of the disclosure. Each Party agrees to protect the other party's Confidential Information from unauthorized access or use, using the same level of care it uses to protect its own confidential information, but in no event less than reasonable care. Upon termination or expiration of this Agreement, the receiving party will promptly return or destroy any Confidential Information of the furnishing Party in its possession or control, as directed by the furnishing Party. At the request of the furnishing Party, the receiving Party will certify to the furnishing Party its compliance with the requirements of the preceding sentence.

14. Indemnification.

(a) By AMS. AMS will defend and indemnify Supplier from and against any third party claim or suit (including, without limitation, reasonable legal fees and expenses) alleging that the use of the Customer Website by Supplier in accordance with this Agreement infringes a third party's intellectual property rights enforceable within the United States of America. Should the Customer Website become the subject of an infringement claim or suit, AMS may (i) obtain for Supplier the right to continue using the Customer Website, (ii) replace or modify the Customer Website to make its use by Supplier non-infringing, or (iii) require Supplier to cease using the Customer Website, in which case Supplier will receive a pro-rated refund of the membership fees already paid to AMS. This Section 14(a) states Supplier's sole and exclusive remedies, and AMS's sole and exclusive obligations, with respect to infringement. AMS will not be responsible for any functionality, materials, information, data or other content or item that is not furnished by AMS.

(b) By Supplier. The Supplier agrees that it is solely responsible for ensuring, at all times that: (i) the Catalog is accurate and complete; (ii) neither the Catalog nor the Supplier Marks infringe the intellectual or other proprietary right or trade secret of any third party enforceable in the United States of America; (iii) the Catalog is not obscene, libelous, slanderous, defamatory, invades the privacy of a third party, or is otherwise illegal or exposes AMS to undue

risk or liability; and (iv) each Order and transaction that Supplier enters into with a Customer does not violate any agreements that the Supplier has with Customer. Supplier will indemnify, defend and hold AMS (and AMS's licensors and suppliers) harmless from any claim or suit (including, without limitation, reasonable legal fees and expenses): (y) that result from a failure of Supplier to meet the foregoing obligations or Supplier will indemnify (z) that arise from the purchase or use of the Supplier Products by Customer(s).

(c) Procedure. The foregoing indemnity obligations shall be conditioned on the indemnified Party giving the Indemnifying Party prompt written notice of any claim or suit with respect to which the Indemnified Party will seek indemnification under this paragraph, cooperating with the Indemnifying Party in defending or settling the claim or suit and allowing the Indemnifying Party to control the defense of the claim or suit, including the selection of attorneys.

15. Warranty Disclaimer.

EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. AMS SPECIFICALLY DOES NOT WARRANT THAT ACCESS TO THE CUSTOMER WEBSITE WILL BE UNINTERRUPTED OR THAT THE RESULTS OBTAINED BY USE OF THE CUSTOMER WEBSITE WILL BE ERROR-FREE.

16. Limitations of Liability.

(a) Limitations. AMS will have no liability under this Agreement for any claims other than for claims by Supplier or claims pursuant to Section 14(a), including without limitation claims asserted by Customers.

(b) No Liability for Certain Damages. Except for AMS's indemnification obligations under Section 14(a) above, AMS's maximum, aggregate liability for all claims (including without limitation, for breach of contract, breach of warranty, negligence or other tort claim) arising under or relating to a particular Customer or a particular Customer Attachment will not exceed the greater of (i) \$5,000, or (ii) the total amount that Supplier actually paid to AMS during the preceding twelve (12) months under the applicable

Customer Attachment. In addition, except for AMS's indemnification obligations under Section 14(a) above, AMS's maximum, aggregate liability for all claims (including without limitation, for breach of contract, breach of warranty, negligence or other tort claim) arising under or relating to this Agreement in any year of the Term exceed the greater of (1) \$10,000, or (2) the total amount that Supplier actually pays to AMS under each Compensation Plan for all of the Customer Attachments entered into pursuant to this Agreement during such year of the Term.

(c) Exclusions from Limitation; Survival. To the extent permissible under applicable law, in no event will either party be liable to the other for: (i) any damages caused by the failure of the other party to perform its responsibilities; or (ii) any lost profits, loss of business, loss of use, loss of data, lost savings or other consequential, special, incidental, indirect, exemplary or punitive damages, even if advised of the possibility of such damages.

(d) Force Majeure. Neither party shall be liable to the other party under this Agreement if it either delays performance or fails to perform as a result of any cause beyond its reasonable control.

(e) Supplier Acknowledgment; Survival of Limitation. Supplier acknowledges and agrees that the limitations of liability set forth in this Section 16 are reasonable, that the pricing set forth in this Agreement reflects this allocation of risk, and that AMS would not have entered into this Agreement in the absence of such limitations of liability. The limitations of liability set forth in this Section 16 will survive notwithstanding the failure of any exclusive remedy under this Agreement.

17. General.

(a) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the parties will replace it with a substitute provision that, to the maximum extent possible, reflects the original intentions of the parties (including without limitation allocations of risk and economic positions of the parties) and is enforceable, and the remainder of this Agreement will continue in full force and effect.

(b) Entire Agreement. This Agreement (including its Attachments) is the entire agreement between the parties and supersedes all prior or contemporaneous agreements, written or oral, relating to its subject matter. This Agreement (including its Attachments) may only be amended or otherwise modified in a writing signed by authorized representatives of both

parties, which specifically references this Agreement. The parties expressly agree that conduct in the absence of such a written amendment will not amend or otherwise modify this Agreement.

(c) Governing Law. This Agreement will be governed by the laws of the Commonwealth of Virginia without regard to any provision of Virginia law that would require or permit the application of the substantive law of another jurisdiction.

(d) Assignment. Supplier may not assign or delegate this Agreement, in whole or in part, without the prior written consent of AMS, and any attempt to do so will be void. This Agreement will be binding upon the parties' respective successors and permitted assigns.

(e) No Waiver. No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party.

(f) Notices. All notices under this Agreement will be deemed given: (i) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; or (ii) when delivered if delivered personally, sent by express courier services, or sent by confirmed facsimile (provided that a copy is sent by another of the foregoing means). All notices will be sent to the other party at its address as set forth below, in the case of AMS, or set forth in Exhibit B, in the case of Supplier, or at such other address as either party specifies in a notice given in accordance with this section.

Gary Lambert, Senior Principal
American Management Systems, Incorporated
301 Edgewater Place #330
Wakefield, MA 01880

Sharie Kirsch, Senior Principal
American Management Systems, Incorporated
4050 Legato Road
Fairfax, VA 22033

(g) Security. Supplier agrees to comply with any rules of operation and security procedures established by AMS from time to time of which AMS informs Supplier. Supplier agrees that neither it nor its employees or agents will attempt to gain or allow access to any data, files or programs to which they are not entitled under this Agreement, and that if such access is obtained Supplier will immediately return such materials to AMS and will be responsible for the

actions of its employees or agents. Each party will use commercially reasonable measures to (i) preserve the security of the Catalog and (ii) prevent unauthorized access to or modification of the Catalog or the Supplier Site, such as using firewalls, authentication techniques, virus protection software and passwords.

(h) Headings. The descriptive headings in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(i) Relationship of the Parties. The relationship between the parties hereto is that of independent contractors. This Agreement shall not be construed as creating an employer/employee, agency or joint venture relationship between the parties. Neither party is granting any exclusive rights under this Agreement.

EXHIBIT A

CUSTOMER ATTACHMENT

CUSTOMER SPECIFIC TERMS

This Customer Attachment is issued pursuant to the Buysense Supplier Agreement dated as of _____ (the “Agreement”) between _____ (“Supplier”) and American Management Systems, Incorporated (“AMS”).

1. Name of Customer: COMMONWEALTH OF VIRGINIA

2. Compensation Plan.

Supplier agrees to pay AMS the following fees with respect to the Customer identified above in accordance with the terms and conditions of the Agreement.

For all transactions, Supplier will pay a transaction fee of one percent (1%) of the order price with a maximum fee for a single event of \$500 for any product or service purchased over the Website.

Supplier agrees to pay an annual registration fee (premium or basic), which must be selected during online registration. Supplier will receive an invoice for this fee.

Premium Service Level (\$200.00)

- Solicitation notification by email/fax
- Electronic submission of bids and proposals
- Vendor catalog posting
- Electronic order receipt (including email or fax)
- Ability to research historical procurement data
- Access commodity history associated with specific solicitations
- On-line vendor registration and vendor profile maintenance

Basic Service (\$25.00)

3. Other Terms and Conditions.

All invoices will be submitted by AMS to Supplier in accordance with the provisions of the Agreement.

Agreed to and accepted by:

American Management Systems, Incorporated (AMS) _____ (Supplier)

By: _____

By: _____

Name: Caroline H. Rapking

Name: _____

Title: Vice President

Title: _____

Date: _____

Date: _____

Supplier Billing Contact Information

Name: _____

Address: _____

Tel: _____ Fax: _____

Email: _____